

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

OCT -4 PM 3:35
DEPUTY CLERK *QC*

UNITED STATES OF AMERICA
Petitioner,

V.

TRACE WAYNE TURNER
Respondent,

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§
§
§
§

2-10CV-235-J
CIVIL ACTION NO. _____

**PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the United States of America, by and through the United States Attorney for the Northern District of Texas, and applies to this Honorable Court for an Order requiring Trace Wayne Turner (hereinafter, Respondent), to appear and give testimony and produce certain books, records and papers as more fully set out in Exhibit A attached hereto, relating to the collection of the tax liability of Respondent, as requested by the summons issued pursuant to Section 7602 of the Internal Revenue Code by Revenue Officer Jolaine Montana, an authorized delegate of the Secretary of the Treasury and of the Commissioner of Internal Revenue, to Respondent, on June 18, 2010, and Petitioner would respectfully show as follows:

I.

Respondent resides at 3401 S. Austin Street, Amarillo, Texas 79109.

II.

Jurisdiction is conferred on this Court by Section 7604(a) of the Internal Revenue Code (26 U.S.C. § 7604(a)).

III.

On June 21, 2010, Revenue Officer Jolaine Montana, an authorized delegate of the Secretary of the Treasury and of the Commissioner of Internal Revenue, pursuant to Section 7603 of the Internal Revenue Code, served a summons, a copy of which is attached hereto and made a part hereof and marked Exhibit A, requiring Respondent to appear and give testimony and produce certain books, records and papers relating to the collection of the tax liability of Respondent, at 7201 I-40 West, Suite 105, Amarillo, Texas 79106 on July 12, 2010, at 9:00 A.M., by leaving an attested copy of the summons at 3401 S. Austin Street, Amarillo, Texas, the last and usual place of abode of Respondent as evidenced in the Certificate of Service on the reverse side of the summons.

IV.

On July 12, 2010, at 7201 I-40 West, Suite 105, Amarillo, Texas, the place specified in the summons, Respondent did not comply with the requirements of the summons as described in Exhibit A.

V.

Previous to the issuance of the summons described above and attached hereto as Exhibit A, the representatives of the Internal Revenue Service had attempted to secure information from the Respondent with which to investigate the collection of the federal tax liability of Respondent for Form 940 for the taxable period ending December 31, 2008; and for Form 941 for the quarterly taxable periods ending: September 30, 2008; December 31, 2008; March 31, 2009; June 30, 2009; and September 30, 2009. The summons attached hereto as Exhibit A was therefore issued under Section 7602 of the Internal Revenue Code. Respondent has refused to comply to date with the summons.

VI.

Attached hereto as Exhibit B is the Declaration of Revenue Officer Jolaine Montana, attesting to the facts recited herein and showing that, upon information and belief, the documents and testimony sought are relevant and necessary to properly investigate the collectability of: Form 940 for the taxable period ending December 31, 2008; and Form 941 for the quarterly taxable periods ending: September 30, 2008; December 31, 2008; March 31, 2009; June 30, 2009; and September 30, 2009.

VII.

The summons, which is the subject matter of this action, was issued for a legitimate purpose, pursuant to the Internal Revenue Code, seeks information relevant for that purpose, and seeks testimony and documents which are not presently in the possession of the Internal Revenue Service. The summons was issued in compliance with all applicable statutes, rules and regulations, and there is no "Justice Department referral" in effect with respect to Respondent or any person whose tax liability is at issue, pursuant to said summons, for the tax years in question as that term is defined in 26 U.S.C. § 7602(c).

WHEREFORE, the United States of America, Petitioner, respectfully prays:

(a) That this Court issue an Order forthwith directing the Respondent to appear before this Court at such time as may be fixed by the court to show cause, if any, why an order should not issue directing and commanding the Respondent to appear before an Officer of the Internal Revenue Service at such time and place as the court may order and to give such testimony and produce such records for inspection and copying as requested in the summons attached hereto as Exhibit A.

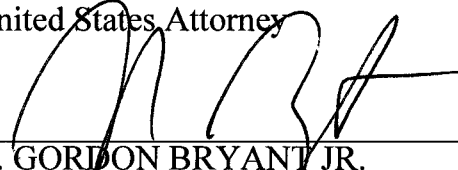
(b) That at the time of said hearing the court shall issue an order directing and commanding the said Respondent to appear before the Secretary of the Treasury or his delegate at such time and place as this Court may order and the Respondent be required to give such testimony and produce such records as requested in the summons attached hereto as Exhibit A.

(c) That the said Order to Show Cause shall also provide that service of such order together with a copy of this Petition and the attached Exhibits thereto may be made by an Agent of the Internal Revenue Service or by the United States Marshal for the Northern District of Texas or any of his Deputies.

(d) That Petitioner shall have its costs of suit and such other and further relief as may be necessary or appropriate.

Respectfully submitted,

JAMES T. JACKS
United States Attorney



D. GORDON BRYANT JR.
Assistant United States Attorney
Amarillo National's Plaza/Two
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Amarillo, Texas 79101-2442
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Fax 806.324.2399
Email: gordon.bryant@usdoj.gov
Texas State Bar No. 03274900



Summons

Collection Information Statement

In the matter of TRACE WAYNE TURNER, 3401 S AUSTIN ST, AMARILLO, TX 79109-4807

Internal Revenue Service (Identify Division) SMALL BUSINESS/SELF EMPLOYED

Industry/Area (Identify by number or name) SB/SE AREA 5 (25)

Periods: See Attachment 1 to Summons Form 6637 for Period Information

The Commissioner of Internal Revenue

To: TRACE WAYNE TURNER

At: 3401 S AUSTIN ST, AMARILLO, TX 79109-4807

You are hereby summoned and required to appear before JOLAINE L MONTANA, an Internal Revenue Service (IRS) officer, and/or his or her designee, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown:

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks, saving account passbooks, records or certificates of deposit for the period:

From 01/01/2010 To 05/31/2010

Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes and judgments receivable, and all life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

7201 I-40 WEST STE 105, AMARILLO, TX 79106-2634 (806) 359-2150x243

Place and time for appearance: At 7201 I-40 WEST STE 105, AMARILLO, TX 79106-2634



on the 12th day of July, 2010 at 9:00 o'clock a m.

Issued under authority of the Internal Revenue Code this 18th day of June, 2010

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 6637 (Rev.10-2006)
Catalog Number 25000Q

JOLAINE L MONTANA

Signature of issuing officer

REVENUE OFFICER

Title

Signature of approving officer (if applicable)

EXHIBIT

Title

Original -- to be kept by IRS



Certificate of Service of Summons

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	6/21/2010	Time	4:20 p.m.
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How ☐ I handed an attested copy of the summons to the person to whom it was directed.

Summons

Was ☒ I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any):

Served

daughter - Brittany Turner 18 yrs old

Signature	Johanne Montana	Title	Revenue Officer
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I certify that the copy of the summons served contained the required certification.

Signature	Johanne Montana	Title	Revenue Officer
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Attachment 1 to Summons Form 6637

In the matter of **TRACE WAYNE TURNER**

Period information: Form 940 for the calendar period ending December 31, 2008 and Form 941 for the quarterly periods ending September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009 and September 30, 2009

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA, and

Petitioner

v.

Trace Wayne Turner, Owner

Respondent.

Civil Action No.

DECLARATION

JOLAINE L MONTANA declares:

1. I am a duly commissioned revenue officer employed in the Small Business/Self-Employed Division Gulf States Compliance Area of the Internal Revenue Service at 7201 I-40 WEST STE 105, AMARILLO, TX 79106-2634.
2. In my capacity as a revenue officer I am conducting an investigation for the collection of tax liability of TRACE WAYNE TURNER for the taxable period(s) ended: 941's - 09/30/2008, 12/31/2008, 03/31/2009, 06/30/2009, 09/30/2009 and 940 - 12/31/2008 .
3. In furtherance of the above investigation and in accordance with Section 7602 of Title 26, U.S.C., I issued on 06/18/2010, an administrative summons, Internal Revenue Service Form 6637, to Trace Wayne Turner, to give testimony and to produce for examination books, papers, records, or other data as described in said summons. The summons is attached to the petition as Exhibit A.
4. In accordance with Section 7603 of Title 26, U.S.C., on 06/21/2010, I served an attested copy of the Internal Revenue Service summons described in Paragraph (3)

EXHIBIT

B

above on the respondent, Trace Wayne Turner, by leaving a copy at last and usual place of abode, as evidenced in the certificate of service on the reverse side of the summons.

5. On 07/12/2010, the respondent Trace Wayne Turner, did not appear in response to summons. The respondent's refusal to comply with the summons continues to the date of this declaration.

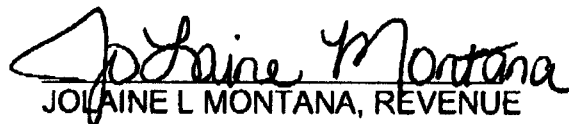
6. The books, papers, records, or other data sought by the summons are not already in the possession of the Internal Revenue Service.

7. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

8. It is necessary to obtain the testimony and to examine the books, papers, records, or other data sought by the summons in order to collect the federal tax liability of TRACE WAYNE TURNER for the taxable period(s) ended 941's - 09/30/2008, 12/31/2008, 03/31/2009, 06/30/2009, 09/30/2009 and 940 - 12/31/2008.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of July, 2010


JOLAINE L MONTANA, REVENUE

OFFICER

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

D. Gordon Bryant, Jr., USAO, 500 S. Taylor, LB 238, Suite 300,
Amarillo, Texas 79101, Tel. 806.324.2356

DEFENDANTS

TRACE WAYNE TURNER

County of Residence of First Listed Defendant Randall
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 USC Section 7602

Brief description of cause:
Enforcement of IRS summonses

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/24/2010

SIGNATURE OF ATTORNEY OF RECORD

D. Gordon Bryant, Jr.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____